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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/684,759	10/14/2003	Li Wang	P0011118.00/LG10126	3360	
27581 MEDTRONIC	7590 12/22/201 Y INC	0	EXAMINER		
710 MEDTRO	NIC PARKWAY NE	ALTER, ALYSSA MARGO			
MINNEAPOL	IS, MN 55432-9924		ART UNIT	PAPER NUMBER	
			3762		
			NOTIFICATION DATE	DELIVERY MODE	
			12/22/2010	ELECTRONIC	

## Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rs.docketingus@medtronic.com sso@cardinal-ip.com

## **Advisory Action** Before the Filing of an Appeal Brief

Ī	Application No.	Applicant(s)				
	10/684,759	WANG ET AL.				
	Examiner	Art Unit				
	Alyssa M. Alter	3762				

-The MAILING DATE of this communication appears on the cover sheet with the correspondence address − THE REPLY FILED <u>04 November 2010</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (vit) appeale fee) in compliance with 37 CF 81.31; or (5) a Request for Continued Examination (RCE) in compliance with 37 CF 81.114. The reply must be filed within one of the following time of continued Examination (RCE) in compliance with 37 CF 81.114. The reply must be filed within one of the following time of continued Examination (RCE) in compliance with 37 CF 81.114. The reply must be filed within one of the following time of the continued Examination (RCE) in compliance with 37 CF 81.114. The reply must be filed within one of the following time of the continued Examination (RCE) in compliance with 37 CF 81.114. The reply must be filed within one of the following time on the continued Examination (RCE) in compliance with 37 CF 81.115 (a) and 18 center of the continued Examination (RCE) in the final rejection. The continued Examination (RCE) in the final rejection of the final RCE and RCE		Alyssa M. Alter	3762					
1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant was timely file one or the following replies: (1) an amendment, affidiation, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a ☐ The period for reply expiresmonths from the mailing date of the final rejection.  b ☐ The period for reply expires on; (1) the mailing date of the final rejection, or (2) the date set forth in the final rejection, whichever is later. In nevert, however, will be statutory pend for reply expires from \$1.31 MonThis from the mailing date of the final rejection.  Examiner Note: If box 1 is checked, check either box (a) or (b). CNLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FIRM, REJECTION. See MPEP 706.070.  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the (e.f. The appropriate extension fee hands the state of the s	The MAILING DATE of this communication appe	ars on the cover sheet with the	correspondence add	ress				
1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant wit timely file one of the following replies: (1) an amendment, affidiation, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a ☐ The period for reply expiresmonths from the mailing date of the final rejection.  b ☑ The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection.  Examiner Note: If box 1 is checked, check either box (a) or (b). CNLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TW MONTHS OF THE FIRM, REJECTION. See MPEP 706.071.  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension tee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension tee under 37 CFR 1.17(a) is calculated from; (1) the expiration date of the shortened statutory period for reply originally set in the final Critica action or (2) as a many reduce any semand patient term adjustment. See 37 CFR 1.704(b).  NOTICE OF APPEAL  ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 4.1.37 (a), b, a avoid dismissal of the appeal. Since Notice of Appeal was been filed, any reply must be filed within the mortical dismissal of the appeal. Since Notice of Appeal was been filed, any reply must be filed within the meriod as filing the Notice of Appeal as been filed, any reply must be filed within the meriod as filing the Notice of Appeal will great the following rejection, but reports and the second of the same part of the date of filing the Notice of Appeal w	·							
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no event, however, will the statulory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TW.  Extensions of time may be obtained under 37 CFR 1.138(a). The date on which the petition under 37 CFR 1.138(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed its the date for purpose of the final rejection, even if timely filed, any reduce any arend patent term adjustment. See 37 CFR 1.73(v) or good for the final rejection, even if timely filed, any reduce any arend patent term adjustment. See 37 CFR 1.74(s).  NOTICE OF APPEAL.  I the Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a), to avoid dismissal of the appeal. Since Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  Imporposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below);  (b) They raise new issues that would require further consideration and/or search (see NOTE below);  (c) They raise new issues that would require further consideration and/or search (see NOTE below);  (b)	<ul> <li>a) The period for reply expiresmonths from the mailing</li> </ul>	date of the final rejection.						
Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (a) activated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (a) advow; if checked. Any reply received by the Office later from three months after the mailing date of the final rejection, even if timely flied may reduce any earned patent term adjustment. See 37 CFR 1.704(b).  NOTICE OF APPEAL.  I The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37(e)), to avoid dismissal of the appeal. Since Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENOMENTS  I The proposed amendments) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or and	no event, however, will the statutory period for reply expire la Examiner Note: If box 1 is checked, check either box (a) or (i	ter than SIX MONTHS from the mailing b). ONLY CHECK BOX (b) WHEN THE	date of the final rejection	on.				
have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is activated from: (1) the surpriation date of the shortened statutory period for reply originally set in Ind Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any same dy patter term adjustment. See 37 CFR 1.74(a) for the proposed amount of the final rejection, even if timely filed, may reply must be filed within the original filed within two months of the date of filing the Notice of Appeal was filed on			20(-)					
Filing the Notice of Appeal (37 CFR 41 37(a)), or any extension thereof (37 CFR 41 37(e)), to avoid dismissal of the appeal. Since Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).    AMENDMENTS   The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a)   They raise new issues that would require further consideration and/or search (see NOTE below);	have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR1 17/40 is calculated form: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (e) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any armed patent term adjustment. See 37 CFR 17/40/11.							
3.	filing the Notice of Appeal (37 CFR 41.37(a)), or any exter	sion thereof (37 CFR 41.37(e)), to	avoid dismissal of the					
(a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal, and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE:	AMENDMENTS	,						
appeal; and/or  (d) They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE:	<ol> <li>The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because         <ul> <li>(a) They raise new issues that would require further consideration and/or search (see NOTE below);</li> </ul> </li> </ol>							
NOTE:		er form for appeal by materially rec	ducing or simplifying ti	ne issues for				
5. Applicant's reply has overcome the following rejection(s): 6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed:		orresponding number of finally reje	ected claims.					
6. Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:  Claim(s) objected to:  Claim(s) objected to:  Claim(s) rejected:  Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE  8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons with the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a Policy will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  10. The affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  11. The representation of the evidence is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  12. The representation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER  13. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  See Continuation Sheet.  14. Alyssa M Alter/			mpliant Amendment (	PTOL-324).				
non-allowable claim(s).  ∩ For purposes of appeal, the proposed amendment(s): a)								
how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) withdrawn from consideration:  AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence filed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons with it is necessary and was not earlier presented. See 37 CFR 4.133(d)(t).  10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHER II. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  See Continuation Sheet.  12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).  Nikleta I. Patel/  Nikleta I. Patel/	non-allowable claim(s).	·	•	-				
Claim(s) allowed:	how the new or amended claims would be rejected is prov		be entered and an ex	xplanation of				
Claim(s) objected to: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Claim(s) rejected: Claim(s) withdrawn from consideration:  AFFIDAVI OR OTHER EVIDENCE  8.								
Claim(s) withdrawn from consideration:  AFFIDAUT OR OTHER EVIDENCE  In affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 oFR 1.116(e).  In affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 oFR 41.33(d)(1).  In affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHEB  It All the request for reconsideration has been considered but does NOT place the application in condition for allowance because:  See Continuation Sheet.  In the status of the claims of the status of the status of the claims.  All the status of the status of the status of the status of the claims.  All the status of the status of the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION/OTHEB.  All the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION OTHER.  All the status of the claims after entry is below or attached.  All the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION OTHER.  All the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION OTHER.  All the status of the claims after entry is below or attached.  REQUEST FOR RECONSIDERATION OTHER.  All the status of the claims after entry is the claims after entry is the status of the claims after entry is the claim of the claims after entry is the status of the claims after entry is the claims after entry is the status of the cla								
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entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons wity it is necessary and was not earlier presented. See 37 CFR 41.33(g/tt).  10.	because applicant failed to provide a showing of good and was not earlier presented. See 37 CFR 1.116(e).	sufficient reasons why the affidavi	t or other evidence is	necessary and				
REQUEST FOR RECONSIDERATION/OTHER  11. \( \text{ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  12. \( \text{ Note the attached Information Disclosure Statement(s)}. \( (PTO/SB/08) Paper No(s). \)  13. \( \text{ Other:} \)  /Niketa I. Patel/  /Alyssa M Alter/	entered because the affidavit or other evidence failed to or	vercome all rejections under appea	l and/or appellant fail:	s to provide a				
I1. ⊠ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u> I2. □ Note the attached Information <i>Disclosure Statement</i> (s). (PTO/SB/08) Paper No(s)      I3. □ Other:      /Niketa I. Patel/ / Alyssa M Alter/								
12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) 13.  Other:  /Niketa I. Patel/ /Alyssa M Alter/	11. 🗵 The request for reconsideration has been considered but does NOT place the application in condition for allowance because:							
13. ☐ Other:								
/Alyssa W Aller								

Continuation of 11, does NOT place the application in condition for allowance because: the arguments are not found persuasive. The Applicant argues the "assition of the lead interprity measurement system of Scheduke to Combs thus would result in a device having two separate impedance measuring systems. In response to this the Applicant is reminded that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See In re Relief, 642 F.2 d. 413, 208 USPO 871 (CCPA 1981).

As a result, the combined teachings of Scheulke and Combs yelld an implanted cardiac stimulation device that monitors intra-thoracic fluid content and lead integrity through impedance data. Therefore the claims stand rejected under Combs in view of Scheulke.